THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos. 19296 OF 1997 & 15 OF 1998

Date 06.10.2005

W.P.No.19296 of 1997

Between:

The Executive Engineer, Buildings Department (State Roads) Srikakulam & others.

..... PETITIONERS

AND

L.Gopal Rao, S/o. late Lobal Savarayya, Near RTC Bus Stand, Tekkali, Srikakulam District & others.

.....RESPONDENTS

W.P.No.15 of 1998

Between:

L.Gopal Rao, S/o. late Lobal Savarayya, Near RTC Bus Stand, Tekkali, Srikakulam District.

..... PETITIONER

AND

The Executive Engineer, Buildings Department (State Roads) Srikakulam & others.

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THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos.19296 OF 1997 & 15 OF 1998

O R D E R:

W.P.No.19296 of 1997 is filed by the Executive Engineer, Buildings Department (State Roads) Srikakulam and others, against the award of the Industrial Tribunal-cum-Labour Court, Visakhapatnam in I.D.No.230 of 1993, dated 21.03.1997. W.P.No.15 of 1998 is filed by the workman against the very same award. As such, both the writ petitions were heard together and are being disposed of by this common order.

The parties shall hereinafter referred to as they are arrayed in W.P.No.19296 of 1997.

Facts, to the extent relevant for this writ petition, are that the first respondent/workman was engaged in (R&B) Department on 08.04.1971 as

Road Roller Cleaner. Contending that he worked continuously till he was removed on 20.08.1973, and that his removal was without giving any notice or without payment of one month's salary and without retrenchment compensation, while retaining his juniors as bad in law, the first respondent approached the Industrial Tribunal-cum-Labour Court, Visakhapatnam, in I.D.No.230 of 1993 seeking reinstatement. The petitioner herein contested the I.D. contending that the services of the first respondent were utilized on daily wage basis, and that he had worked during the period 20.08.1972 to 31.07.1974 on daily wage basis and had not worked continuously for 240 days in any year during this period and therefore, he was not entitled to claim any benefit under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). It is further stated that the job in which the first respondent was engaged as Road Roller Cleaner is not in existence, that his services were no longer required, more so, since, grants for the year 1974-75 had not been released in the said division, he was not engaged further as the Chief Engineer (R&B) NH and Administration had issued circular No.55747/Ser.IV(2)/74-1., dated 22.07.1974, directing the Executive Engineer to retrench the junior most employees of the division.

The Tribunal, by award dated 21.03.1997, held that the retrenchment of the first respondent was illegal and that he was entitled to be reinstated into service. While directing reinstatement of the first respondent as an unskilled worker, the Labour Court, however, denied him back wages and continuity of service.

Aggrieved by the award in so far as it directed reinstatement of the first respondent, the Executive Engineer filed W.P.No.19296 of 1997, and aggrieved by the award of the Labour Court in denying back wages and continuity of service, W.P.No.15 of 1998 is filed by the first respondent /workman.

Learned Government Pleader for Transport would vehemently contend before this Court that the first respondent had not worked for 240 days in a calendar year and as such, was not entitled for the protection under Section 25-F of the Act.

Section 25-B of the Act defines continuous service, for the purpose of Chapter V-A, to mean that a workman shall be deemed to be in continuous

service, for a period of one year, if he is, for that period, in uninterrupted service, Section 25-B(2)(a) provides that a workman, who is not in continuous service within the meaning of clause(1) for a period of one year or six months, shall be deemed to be in continuous service under an employer for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days. Continuous service under Section 25-B(2) (a) requires a workman to work continuously for 240 days during a period of twelve months preceding the date of his termination from service. The requirement of working 240 days is for a period of twelve months prior to the date of his termination and not twelve calendar months from 1st January till 31st December. From the details furnished before the Tribunal, it is clear that the first respondent had worked for more than 240 days within the period of twelve months prior to the date of his termination. As such, he is deemed to have satisfied the requirement of "continuous service" under Section 25-B of the Act and would thereby, be entitled for the protection under Section 25-F of the Act. It is not in dispute that the services of the workman had been terminated without complying with the mandatory requirements of Section 25-F of the Act.

While several contentions are raised by the Executive Engineer in W.P.No.19296 of 1997 before this Court, they do not seem to have been pleaded before the Industrial Tribunal. In the absence of any such pleading, the Tribunal could not have examined these questions and since the scope of the present writ petition is limited to a challenge to the award of the Labour Court, it is not open for the petitioner to raise questions of fact for the first time before this Court. While it is not in dispute that the first respondent had approached the Tribunal 20 years after his services were terminated, in the absence of any plea regarding laches, the Labour Court was not called upon to adjudicate this question. The Tribunal has recorded a finding that while the services of the first respondent were terminated, his juniors were continued in service. Having found that the first respondent had worked for more than 240 days within a period of twelve months prior to the date of this termination, the award of the Labour Court directing reinstatement of the petitioner cannot be said to be either illegal or contrary to law. W.P.No.19296 of 1997, filed by the Executive

Engineer, therefore, fails and is accordingly dismissed.

Sri V.Sudhakar Reddy, learned counsel for the first respondent (petitioner in W.P.No.15 of 1998), would submit that having held that the services of the petitioner had been terminated without complying with Section 25-F of the Act, the Tribunal erred in denying continuity of service and back wages to the workman. Learned counsel would contend that for violation of Section 25-F of the Act, reinstatement with continuity of service and full back wages is the norm and in the absence of reasons for denial thereof, back wages cannot be denied to the workman.

While it is true that the conditions preceding retrenchment, as prescribed in Section 25-F of the Act, is mandatory, violation of which would normally result in reinstatement with full back wages, the fact remains that in the present case, the first respondent/workman had approached the Labour Court in 1993, nearly twenty years after his removal from service ie., on 31.07.1974. While it is true that there is no specific plea by the Executive Engineer before the Tribunal in this regard, I see no justification to exercise the discretionary jurisdiction of this Court, under Article 226 of the Constitution of India, in favour of workman and to reward him for his inordinate delay of nearly twenty years in approaching the Tribunal and in raising the dispute in I.D.No.230 of 1993. The first respondent, having chosen to remain quiet for nearly twenty years after the date of his termination, and having chosen to approach the Industrial Tribunal in the year 1993, cannot be heard to say that he shall, as a matter of right, be paid back wages for the said period or that he be granted continuity of service. I find no reasons to interfere with the award of the Industrial Tribunal. The award is upheld.

Both the writ petitions fail and are accordingly dismissed. There shall however be no order as to costs.

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06.10.2005

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